

USDOL/OALJ Reporter

Richter v. Baldwin Associates, 84-ERA-9 (Sec'y Feb. 22, 1994)

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DATE: February 22, 1994

CASE NOS. 84-ERA-9

84-ERA-10

84-ERA-11

84-ERA-12

IN THE MATTER OF

DONALD RICHTER,

WILLIAM J. JOHNSON,

RONALD D. LEHMAN, [1]

COMPLAINANTS,

v.

BALDWIN ASSOCIATES,

and

ILLINOIS POWER COMPANY,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINTS

Before me for review is the Administrative Law Judge's (ALJ) Order of Dismissal issued on May 17, 1988, in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). The ALJ granted dismissal of the complaint with prejudice based on his review and approval of a Settlement Stipulation entered into by the parties. The Settlement Stipulation was not made a part of the case record, however, "for the reason that the parties in good faith have agreed that such documents remain confidential." See Order of Dismissal at 1.

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On March 22, 1989, the Secretary issued an Order to Submit Settlement Agreement providing the parties thirty days to submit a copy of the settlement agreement for review by the Secretary,

as required pursuant to Section 5851(b)(2)(A). The parties complied and submitted a copy of the fully executed Settlement Stipulation dated April 22, 1988. See Complainants' counsel's letters of April 5, 1989 and May 5, 1989; Respondent counsel's letter of April 7, 1989. Complainants' counsel asserted that Respondent had complied in all respects to the Settlement Stipulation. Respondent counsel requested that the Settlement Stipulation not made be a part of the record since a term of the agreement was that it be kept confidential. Alternatively, Respondent requested that the Settlement Stipulation be placed under seal. Resp. letter of April 7, 1989.

Pursuant to 42 U.S.C. § 5851(b)(2)(A) and 29 C.F.R. § 24.6(a), I have the authority and responsibility to review the terms of any settlement agreement which purports to settle an ERA complaint before the Secretary. [2] See *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. United States Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Hamka v. Detroit Edison Company*, Case No. 88-ERA-26, Sec. Ord. to Submit Attachments, Dec. 9, 1991, slip op. at 2; *Macktal v. Brown & Root, Inc.*, Case No. 86-ERA-23, Sec. Ord. Disapproving Settlement and Remanding Case, Oct. 13, 1993, slip op. at 2-3. Contrary to Respondent's request, the copy of the settlement

agreement submitted for review becomes a part of the record in the case. 5 U.S.C. § 556(e) (1988); *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Ord. Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 5-6; *Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec. Final Ord. Approving Settlement and Dismissing Complaint, June 28, 1993, slip op. at 2, n.1; *Hamka*, slip op. at 2, n.1; *Thompson v. The Detroit Edison Co.*, Case No. 87-ERA-2, Sec. Ord. to Show Cause, April 26, 1990, slip op. at 5, n.3.

The terms of the Settlement Stipulation must be carefully reviewed to determine if they are fair, adequate and reasonable. *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 10, Sec. Ord. to Submit Settlement Agreement, March 23, 1989, slip op. at 2. I note that the Settlement Stipulation appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See Paragraph 3. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, I have limited my review to determining whether the terms of the settlement are fair, adequate and reasonable to settle Complainants' allegations that Respondents violated the ERA.

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With respect to the confidentiality provision in Paragraph 8 of the Settlement Stipulation, I point out that the Secretary has concluded that settlement agreements, being a part of the record, are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), which requires agencies to disclose requested documents unless they are exempt from disclosure. See *Corder v. Bechtel Energy Corp.*, Case No. 88-ERA-9, Sec. Ord., Feb. 9, 1994, slip op. at 4-5; *Debose v.*

Carolina Power and Light Co., Case No. 92-ERA-14, Sec. Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-4; *Plumlee*, slip op. at 6. Respondent's request that the settlement be placed under seal is accordingly rejected. See *Corder*, slip op. at 5.

Upon careful review, I find that the terms of the Settlement Stipulation are fair, adequate and reasonable to settle Complainants' allegations that Respondents violated the ERA. Accordingly, I approve the Settlement Stipulation and dismiss the complaints with prejudice.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] As explained in footnote 1, page 1 of the Secretary's Order to Submit Settlement Agreement of March 22, 1989, the caption has been corrected to reflect the dismissal of Dale Murphy's complaint.

[2] It is well established that the Department of Labor does not simply provide a forum for private parties to litigate their employment discrimination suits. Protected whistleblowing under the ERA may expose not just private harms, but health and safety hazards to the public, and the Secretary represents the public interest in keeping channels of information open by assuring that settlements adequately protect whistleblowers. See *Hamka*, slip op. at 3, n.2.